

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

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In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

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In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO ELECTRIC POWER AUTHORITY
("PREPA"),

Debtor.

PROMESA
Title III

No. 17 BK 4780-LTS

**Court Filing Relates Only to PREPA
and Shall Only be Filed in Case No. 17-BK-4780 (LTS)**

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**MEMORANDUM OF INTEREST BY CREDITOR WHITEFISH ENERGY HOLDINGS, LLC, TO CLARIFY THE RECORD AS STATED IN MOTION OF NATIONAL PUBLIC FINANCE GUARANTEE CORPORATION, ASSURED GUARANTY CORP., ASSURED GUARANTY MUNICIPAL CORP., AND SYNCORA GUARANTEE INC. FOR RELIEF FROM THE AUTOMATIC STAY TO ALLOW MOVANTS TO ENFORCE THEIR
STATUTORY RIGHT TO HAVE A RECEIVER APPOINTED**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (iv) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780 (LTS)) (Last Four Digits of Federal Tax ID: 3747).
4835-6811-5585.7

Creditor Whitefish Energy Holdings, LLC (“WEH”), by and through its undersigned counsel, hereby files this Memorandum of Interest by Creditor Whitefish Energy Holdings, LLC (the “Memorandum”) Regarding Motion of National Public Finance Guarantee Corporation, Assured Guaranty Corp., Assured Guaranty Municipal Corp., and Syncora Guarantee Inc. (the “Movants”) For Relief From the Automatic Stay to Allow Movants to Enforce Their Statutory Right to Have a Receiver Appointed (the “Motion”). WEH reserves its rights regarding the relief requested in the Motion, and files this Memorandum for the limited, but important, purpose of correcting the factual record regarding its work in Puerto Rico. Accordingly, WEH respectfully states as follows.

INTRODUCTION

In both the Motion as well as the proposed Complaint for Appointment of Receiver, the Movants misrepresent and distort the facts concerning WEH and the services it performed on an emergency basis in the Commonwealth of Puerto Rico following the passage of Hurricanes Irma and Maria. Contrary to the Movants’ assertions, the services provided by WEH were essential at the time to help PREPA survive the catastrophic damage of the hurricanes and the long-term disrepair of the island’s power grid. Without any support to their pejorative conclusions regarding WEH, the Movants attempt to paint the picture of a sham contract, awarded to an inexperienced company, through a deficient selection and contracting process. Movants allege that WEH charged unreasonably high rates and that its work was deficient. Movants ignore that the WEH contract was reviewed and evaluated by the Office of the Comptroller of the Commonwealth of Puerto Rico, and the Comptroller publicly stated that there were no irregularities with the contract

awarded to WEH. Movant's general allegations regarding WEH's performance under the contract should not be considered as a true fact for the granting of Movant's request.

It is well documented that, in the immediate aftermath of Hurricanes Maria and Irma, WEH's swift action and willingness to provide services in Puerto Rico on an emergency basis, coupled with its unique ability to replace *transmission* lines (rather than just distribution lines), in remote mountainous areas accessible only by helicopter, helped PREPA survive the catastrophic damage of the hurricanes and the long-term disrepair of the island's power grid. Indeed, WEH's work has been praised as the most efficient and cost-effective of any contractor working on the island.²

Thus, whether or not the Movants are entitled to the appointment of a receiver, such appointment cannot be properly predicated on PREPA's engagement of WEH and the services duly provided by WEH, under an emergency contract that was essential for the restoration of power after the passage of Hurricanes Irma and Maria.

THE FACTS

1. On May 3, 2017, the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board") filed a voluntary petition for relief pursuant to PROMESA section 304(a) (the "Title III Case"). Following this, the Oversight Board filed Title III cases for various entities, including the Puerto Rico Electric Power Authority ("PREPA") on July 2, 2017.

² See, e.g., "How the US Turned Hurricane Maria from a Natural Disaster to a Manmade Tragedy, September 21, 2018"; available at: <https://www.cnn.com/2018/09/21/us/puerto-rico-hurricane-maria-natural-disaster-human-catastrophe-weir/index.html> ("Before leaving the island, the fired WEH crews managed to repair five transmission lines faster and cheaper than other contractors, PREPA records show, and were given a 'favorable review' by FEMA's Inspector General and PREPA's new chief, José Ortiz.")

2. WEH is an electric construction and repair company that specializes in transmission line and grid reconstruction, disaster relief and special projects in support of power utility companies. The company's leadership has built a track record of success managing projects primarily, but not limited to, North America, with a specific capability working difficult, rugged and rural terrains and geography. Projects include recovery efforts from fires and intense weather systems related to thunderstorms, blizzards, tornadoes, tropical storms and hurricanes.

3. WEH is led by CEO Andy Techmanski, who started his 22-year career in the industry as a trained journeyman lineman, and then leveraged his experience to chart a career in project management, eventually holding senior-level positions with power and electric field services companies across the U.S. and Canada. This led to his founding of WEH in 2015, and he is supported by a core project management team experienced in leading projects worldwide.

4. Based in Whitefish, Montana, the company is built on an innovative, growing and accepted new business model for its industry in this age, where the core management team relies on a network of partners and service providers to quickly ramp up to meet the demand of a project or task. This model keeps costs low and taps into proven expertise in technology and communications, logistics, human resources, and procurement. This extensive network allows WEH to address projects at any scale while minimizing overhead and passing cost savings through to the client and, ultimately, consumers. At the time WEH began its work with PREPA, it had a complete and experienced team of 12 full-time employees in addition to the partners and service providers discussed above.

5. On September 26, 2017, after Puerto Rico was struck by two hurricanes, which severely damaged its electric grid, PREPA entered into a contract with WEH for the repair of the

electrical system main structures (the backbone of the system) comprised of approximately 200 miles of transmission lines and towers, many of which were located in the mountainous region of Puerto Rico's rugged interior (the "WEH Contract"). WEH's primary mission under the WEH Contract was to repair the transmission lines that connected the power stations in the South (its source of power generation) to the power stations in the North (where most users were located). The repair of these transmission lines was a prerequisite to restoring power to individual users. These transmission lines were not accessible by land but only by air, and many contractors did not have experience with this type of remote access repair work on high voltage transmission lines. At the time the storms were approaching Puerto Rico, WEH was just finishing up a similar remote access project in a mountainous region in the State of Washington, and PREPA understood that the WEH team had the necessary experience to repair the 230kV transmission lines in remote areas with no access roads.

6. WEH received the WEH Contract from PREPA following WEH's outreach to PREPA describing its capabilities and providing its rates and following WEH's visit to the island, during which WEH met with PREPA's engineers responsible for the restoration efforts. Contrary to the wholly unsupported allegations in the Motion, WEH received the WEH Contract solely on the merits of its capabilities and its willingness to mobilize quickly without requiring a sizeable advance payment. WEH did not engage in any lobbying efforts or seek any other political influence to obtain the WEH Contract.

7. In June 2018, the Comptroller of Puerto Rico publicly stated that there were no irregularities in PREPA's awarding of the contract to WEH.

8. The WEH Contract, as amended, had a ceiling value of \$300 million. PREPA issued releases to WEH for each of the transmission and distribution line segments it asked WEH to repair based on budgets provided by WEH, and WEH only performed work on the line segments approved by PREPA. As such, the WEH Contract obligated PREPA to pay WEH only for work PREPA asked WEH to perform and which work was actually performed by WEH on a time-and-materials basis, up to a ceiling of \$300 million.

9. WEH worked with its own management, employees and network of partners and service providers, to provide services pursuant to the WEH Contract. Over the course of two months, WEH brought more than 550 crew members and 600 pieces of heavy equipment to the island, overcoming early logistics and transportation challenges to get both manpower and support services to Puerto Rico. In typical disaster recovery on the mainland, workers drive from neighboring states, stay in hotels on the outskirts of the storm where there still is electricity, and drive their bucket trucks into the storm area daily to perform repair work. However, here, with workers and equipment all needing to be sent to the island by air or by water, and the lack of communications, electricity and water, WEH provided all logistics for its employees and subcontractors (including transportation, equipment, housing, food, and water).

10. Prior to the November 30, 2017 termination date, WEH completed all of the work that had been requested by PREPA including, *inter alia*, the repair of the five (5) transmission line segments assigned by PREPA to WEH, which constitute part of the backbone of the transmission

system in the area.³ These were the most critical transmission lines that facilitated the restoration of power to hospitals, industry, and the City of San Juan.

11. More specifically, WEH completed the following:

(a) The sum of the WEH work covered more than 200 miles of transmission lines. In most areas, WEH crews cleared the right-of-ways to reach structures and lines before damage assessment and work could even begin. That preliminary work also involved clearing access roads and helicopter staging areas so that repair equipment and manpower could be transported to repair sites;

(b) Over the course of that 200 miles of transmission line repair work, teams replaced over 50 towers, dismantled a like number of towers and inventoried parts for salvage and reuse, replaced structures, and completed corrective action on at least 200 other transmission structures; and

(c) WEH also repaired over 200 miles of critical distribution line infrastructure. Restoring electricity to major residential and industrial areas was PREPA's top priority. WEH restored the first electricity to San Juan, Caguas, Manati and Juntos customers. In doing so, WEH replaced and repaired several hundred poles and re-wired critical distribution lines.

12. In short, by the time WEH completed its work on November 30, 2017, power restoration stood at 65.6 percent. Federal Emergency Management Agency ("FEMA") official-Dr. Ahsha Tribble said, "Whitefish was there early, they did a good job, they took a risk, that risk is still being weighed."⁴

CONCLUSION

WHEREFORE, for the foregoing reasons, WEH respectfully submits the foregoing facts in order to correct the unsupported facts alleged by Movants in their Motion for Appointment of Receiver regarding the contract and services provided by WEH to PREPA, on an emergency basis

³ The chart detailing the restoration of transmission lines is part of PREPA's September 24, 2018 weekly disclosure to bondholders and other parties in this case (the "Weekly Disclosures"), on page 12. The Weekly Disclosure from September 24, 2018 can be found here: <https://emma.msrb.org/ES1200256-ES937715-ES1338535.pdf>.

⁴ <https://juntasupervision.pr.gov/index.php/en/videos-of-meetings/> (starting at 26:36)

throughout the Island of Puerto Rico after the passage of Hurricanes Irma and Maria. Furthermore, it should be noted in the record, that the Comptroller of Puerto Rico publicly stated that there were no irregularities in PREPA's awarding of the contract to WEH.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 25th day of January, 2019.

I HEREBY CERTIFY that on this same date I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the participants appearing in said record including the US Trustee, counsel for AAFAF, counsel for the Oversight Board, Counsel for the Creditor's Committee, and Counsel for the Retiree Committee.

Respectfully submitted,

FOLEY & LARDNER LLP

/s/ Ann Marie Uetz

Ann Marie Uetz (*pro hac vice*)
500 Woodward Ave., Suite 2700
Detroit, MI 48226
Telephone (313) 234-7100
Facsimile (313) 234-2800
auetz@foley.com
Counsel for WEH

and

C. CONDE & ASSOC.

/s/Carmen D. Conde Torres

Carmen D. Conde Torres, Esq.
USDC 207312

/s/Luisa S. Valle Castro

Luisa S. Valle Castro, Esq.
USDC No. 215611

254 San José Street, 5th Floor
Old San Juan, Puerto Rico 00901
Telephone: 787-729-2900
Facsimile: 787-729-2203
E-Mail: condecarmen@condelaw.com
ls.valle@condelaw.com
Counsel for WEH